IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

CHURCH OF THE LUKUMI BABALU AYE, INC.,
and ERNESTO PICHARDO,

Petitioners,

v.

CITY OF HIALEAH,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

QUESTIONS PRESENTED

I. May Petitioners demand an exemption from neutral and generally applicable laws that prohibit the cruel or unnecessary killing of animals, an offense under both state and municipal law which is defined to include ritual animal sacrifice?

II. Does Respondent have compelling interests in the protection of animals from cruel or unnecessary killing, the protection of audiences (including children) from the spectacle of cruelty to animals, and the protection of the public from health hazards associated with the unregulated killing and disposal of sacrificed animals?

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BRIEF FOR THE WASHINGTON HUMANE SOCIETY AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT

INTEREST OF *AMICUS CURIAE*[1/]

The Washington Humane Society is both a national organization and a local enforcement agency dedicated to the prevention of cruelty to animals. The Society was chartered by the 41st Congress of the United States in 1870, and it is the only such chartered animal welfare organization. 16 Stat. 158, ch. 135, § 1. Working with the United States Attorney for the District of Columbia, the Society enforces the District of Columbia's anti-cruelty laws. These laws include general prohibitions that have been applied to persons engaging in purportedly religious conduct that inflicts cruelty to animals, conduct like that of petitioners in this case.[2/] The Washington Humane Society therefore has a direct interest in the outcome of this litigation, in addition to its more general concern to prevent unnecessary cruelty to animals.

[1/] This brief is filed with the permission of the parties. Consents have been filed with the Clerk of this Court.

[2/] The ritual sacrifice of animals is not an isolated problem confined to southern Florida. Pursuant to its authority to enforce the District of Columbia's animal cruelty laws, D.C. CODE ANN. §§ 32-901 – 32-911 (1981), the Washington Humane Society has taken legal actions against Santeria practitioners in the past. In 1987, after meetings with representatives of the Attorney General's office, the D.C. Department of Consumer and Regulatory Affairs, and the Washington Humane Society, a Santeria priest signed an agreement not to sacrifice animals during any ceremonies. *See* Wash. Times, December 2, 1987, at B2. *See also* Wash. Post, April 15, 1991, at A9 (describing fourteen roosters confiscated from a Santeria practitioner).

STATEMENT OF THE CASE

This litigation arises out of a series of ordinances enacted by the City of Hialeah during the summer of 1987. Responding to concerns about public health and animal welfare, a hearing was held by the City Council on June 9, 1987. The Council unanimously incorporated by reference the State of Florida's animal cruelty law, FLA. STAT. Ch. 828, as City Ordinance No. 87-40. That State statute provides in part:

> *Whoever* unnecessarily overloads, overdrives, tortures, torments, deprives of necessary sustenance or shelter, or *unnecessarily or cruelly beats, mutilates, or kills any animal*, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhuman manner, *is guilty of a misdemeanor* of the first degree . . . .

FLA. STAT. § 828.12 (emphasis supplied).

In September 1987, the City adopted three other ordinances to refine and clarify the operation of Ordinance No. 87-40. On September 8, 1987, the City adopted Ordinance No. 87-52, a law which prohibits the possession of animals intended for sacrifice or slaughter. On September 22, 1987, the City adopted two more ordinances, No. 87-71 (prohibiting the sacrifice of animals) and No. 87-72 (prohibiting the slaughter of any animals in premises not properly zoned for that purpose).

All four City ordinances were adopted after the Church of the Lukumi Babalu Aye, Inc., opened a Santeria

church in the City. Animal sacrifices are conducted during ceremonies attended by Santeria adherents, including children of all ages. On September 25, 1987, three days after the last two ordinances were adopted and before any enforcement action was threatened or even suggested, the Church and Ernesto Pichardo, one of its priests, (hereinafter collectively referred to as "the Santerias") brought an action in the United States District Court for the Southern District of Florida seeking a declaratory judgment, injunction and damages against the City of Hialeah. The complaint alleged, *inter alia*, that the City's passage of the 1987 ordinances violated the Santerias' constitutional rights under the First and Fourteenth Amendments; it did not challenge the Florida statute upon which Ordinance No. 87-40 was based.

The findings of the district court, after a seven day bench trial, are not contested here. *See* Appendix to Petition ["Pet. App."] A3, 723 F. Supp. 1467 (S.D. Fla. 1989):

> The Santeria religion is practiced by approximately 50,000 adherents in South Florida, Pet. App. A6, 723 F. Supp. at 1470, with smaller groups located in other parts of the United States including Washington, D.C. Practitioners sacrifice a wide variety of animals during ceremonies, including chickens, pigeons, doves, ducks, guinea fowl, goats, sheep and turtles. Pet. App. A9, 723 F. Supp. at 1471. The district court estimated, based on testimony introduced by the Santerias' themselves, that 12,000 to 18,000 animals are sacrificed during initiation ceremonies alone in South Florida each year, Pet. App. A15-A16 n.22, 723 F. Supp. at 1473 n.22; the animals often are treated in an inhumane fashion prior to sacrifice, Pet. App. A17-A18, 723 F. Supp. at 1474; and the methods used to sacrifice these animals are cruel, Pet. App. A14-A15, 723 F. Supp. at 1473, for example puncturing an animal's neck by stabbing a knife into the side of its neck, Pet. App. A12-A13, 723 F. Supp. at 1472. The court also concluded that children witnessing brutal animal sacrifices could suffer detrimental psychological effects. Pet. App. A19-A22, 723 F. Supp. at 1475-76. It also found that the indiscriminate disposal of carcasses in public places can create a health hazard. Pet. App. A18-A19, 723 F. Supp. at 1474-75.

On appeal, the Santerias argued that the district court's decision was inconsistent with this Court's intervening decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). They did not, however, contest the district court's extensive findings of fact. The court of appeals summarily affirmed. Pet. App. A1, 936 F.2d 586 (11th Cir. 1991). On March 23, 1992, this Court granted certiorari.

SUMMARY OF ARGUMENT

The City of Hialeah's general prohibition against the cruel or unnecessary killing of animals (Ordinance No. 87-40) is a neutral and generally applicable law which, under the Court's ruling in *Employment Division v. Smith*, can be applied to religious activities whether or not it serves a compelling state interest. Hialeah's subsequently enacted ordinances, which *inter alia* define ritual animal sacrifice, simply clarify that such practices are also covered by this general prohibition and do not alter the conclusion that Hialeah's anti-cruelty law is a neutral and generally applicable prohibition.

In any event, the Hialeah ordinances advance several compelling state interests: The ritual sacrifice of animals is a barbaric practice that the state can justifiably ban, it jeopardizes the psychological welfare of people (especially children) who witness such conduct, and it creates serious health hazards. The failure to prohibit other forms of animal killing, such as the euthanasia of strays, which *promotes* public health and animal welfare, or hunting and fishing, which have never been considered cruel or unnecessary, in no way undermines the City's vital interests in banning the repugnant practice of animal sacrifice by whomever it is practiced.

ARGUMENT

I. THE CITY OF HIALEAH'S ANIMAL CRUELTY ORDINANCES ARE NEUTRAL LAWS OF GENERAL APPLICATION THAT DO NOT VIOLATE THE SANTERIAS' FREE EXERCISE RIGHTS

The Santerias' entire argument is premised on a mischaracterization of the City of Hialeah ordinances. Properly construed, those ordinances represent a neutral and generally applicable law banning conduct that is universally condemned. Under the Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), such laws are not invalid under the Free Exercise Clause of the First Amendment simply because they prohibit conduct that some persons deem central to their religion.

A. Ordinance No. 87-40 And Florida's Statute Prohibiting The Unnecessary Or Cruel Killing Of Animals Are Neutral And Generally Applicable Laws That Can Be Applied To Religious Conduct Without Violating The Free Exercise Clause Of The First Amendment.

The Santerias challenged all four animal cruelty ordinances adopted by the City of Hialeah in 1987. However, the first ordinance, No. 87-40, only incorporates into the City's code a state statute prohibiting cruelty to animals that was first enacted in 1901 and that the Santerias do not challenge. FLA. STAT. § 828.12. Moreover, the state statute incorporated by Ordinance No. 87-40 only added to the prior Hialeah anti-cruelty law a specific prohibition on the cruel or unnecessary *killing* of an animal.[3/] Most state and many local jurisdictions in this country have laws in force similar to the Florida statute and Hialeah Ordinance No. 87-40. *See, e.g.*, MODEL PENAL CODE § 250.11 (1985), at 426-27; D.C. CODE ANN. § 22-801 (1981); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991).

Neutral and generally applicable laws against the cruel or unnecessary killing of animals, in and of themselves, prohibit the ritual sacrifice of animals. Indeed, the district court held that even if "the [Hialeah] ordinances were invalid, Plaintiffs would still be prohibited from performing ritual sacrifices" under Florida's general anti-cruelty law. Pet. App. A29, 723 F. Supp. at 1479, *citing* Op. Fla. Att'y Gen. 87-56 (1987) (ritual killing of an animal

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[3/] The City had a longstanding prohibition against "unnecessarily or cruelly beat[ing] or mutilat[ing] any animal." City of Hialeah Code § 6.5.

does not constitute a "necessary" killing).[4/] Thus, just as in *Employment Division v. Smith*, the Santerias' conduct is illegal as a matter of state law and is therefore unprotected by the Free Exercise Clause of the First Amendment. Indeed, in *Smith*, this Court rejected the argument that the Free Exercise Clause "required religious exemptions from civic obligations" imposed generally on the citizenry by pointing to animal cruelty laws as an example of such neutral and generally applicable laws. 494 U.S. at 888-89 (citing the decision of the district court in this case).

While anti-cruelty laws are sufficiently general to withstand challenge under the Free Exercise Clause, they are not so general as to be vulnerable to claims of undue vagueness or overbreadth.

1. Anti-Cruelty Laws Are Not Vague.

"[T]he majority of state courts confronted with this issue have upheld the constitutionality of cruelty to animal statutes against claims of unconstitutional vagueness." *Wilkerson v. State*, 401 So. 2d 1110, 1111 (Fla. 1981) (collecting cases). *See also People v. Bunt*, 462 N.Y.S.2d 142, 146 (N.Y. Just. Ct. 1983) ("Statutes similar to New York's have been upheld as constitutional by other state courts and certainly represent a reasonable extension of the state's police powers."). In *Wilkerson*, the Supreme Court of Florida held that the term "unnecessarily" as used in the state's anti-cruelty law was not unconstitutionally vague:

[4/] "[O]pinions of the attorney general are persuasive and entitled to great weight in construing Florida Statutes." *State v. Office of Comptroller*, 416 So. 2d 820, 822 (Fla. App. 1982); *Perry v. Larson*, 104 F.2d 728, 730 (5th Cir. 1939).

> "The particular words complained of, 'unnecessarily or excessively' are not vague when considered in the context of the entire Statute and with a view to effectuating the purpose of the act. The fact that specific acts of chastisement are not enumerated, an impossible task at best, does not render the statutory standard void for vagueness. Criminal laws are not 'vague' simply because the conduct prohibited is described in general language."

401 So. 2d at 1112 (quoting *Campbell v. State*, 240 So. 2d 298, 299 (Fla. 1970), *appeal dismissed*, 402 U.S. 936 (1971)). *See also Tuck v. United States*, 467 A.2d 727, 731-33 (D.C. 1983), *aff'd*, 477 A.2d 1115 (1984); *State v. Tweedie*, 444 A.2d 855, 857 (R.I. 1982); *State v. Wilson*, 464 So. 2d 667, 668 (Fla. App. 1985) ("It would be impossible to draft a statute to encompass all situations in which treatment of an animal would be cruel . . . .").

Moreover, this Court previously has sustained the application of broadly worded laws to religious conduct. In *Cleveland v. United States*, 329 U.S. 14 (1946), the Court decided that the broad residual clause in the Mann Act, 36 Stat. 825 (1910) (current version at 18 U.S.C. § 2421), prohibiting, *inter alia*, the interstate transportation of a woman "for any other immoral purpose," could be used to prosecute Mormons practicing polygamy. The Court rejected petitioners' argument that the Mann Act only prohibited commercialized sexual vice, observing that "polygamous practices have long been branded as immoral in the law." 329 U.S. at 19. The Court also rejected petitioners' free exercise defense:

> [I]t has long been held that the fact that polygamy is supported by a religious creed affords no defense in a prosecution for bigamy.... Whether an act is immoral within the meaning of the statute is not to be determined by the accused's concepts of morality. Congress has provided the standard.

Id. at 20.[5/]

Finally, should the Florida anti-cruelty statute or corresponding ordinance be applied in a selective fashion to their religious conduct, the Santerias could always bring an equal protection challenge alleging discriminatory enforcement.[6/] *See Employment Division v. Smith*, 494 U.S. at 886 n.3; *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (public park law held unconstitutional because "a religious service of Jehovah's Witnesses is treated differently than a religious service of other sects"); *Niemotko v. Maryland*, 340 U.S. 268, 272-73 (1951) (same). However, in a facial challenge of the sort now before the Court, the fear of selective enforcement does not provide a basis for finding that anti-cruelty laws are unconstitutionally vague.

[5/] The Court has held laws challenged on free exercise grounds unconstitutionally vague when licensing schemes are involved because of the discretion that such laws place in the hands of the licensor. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940). Of course, anti-cruelty laws are not vulnerable to the same risk of discriminatory application. *See id.* at 306-07 (distinguishing a licensing system for the solicitation of funds from penal laws aimed at protecting citizens from fraudulent conduct).

[6/] In an aspect of the decision in this case that the Santerias did not appeal, the district court rejected claims of harassment and discriminatory enforcement. Pet. App. A47-A49, 723 F. Supp. at 1487-88.

2. Anti-Cruelty Laws Are Not Overbroad.

Overbreadth arguments have proven equally unavailing for those charged with violations of animal cruelty laws. *See State v. Todd*, 468 N.W.2d 462, 466 (Iowa 1991); *State v. Kaneakua*, 597 P.2d 590, 594 (Haw. 1979). Indeed, such arguments have been rejected by two lower courts faced with free exercise challenges brought by Native Americans charged with the unlawful killing of animals in furtherance of religious activities:

> The possibility that a statute might be unconstitutionally applied to certain religious practices does not render it void on its face where the remainder of the statute covers a whole range of easily identifiable and constitutionally proscribable conduct.

United States v. Billie, 667 F. Supp. 1485, 1495 (S.D. Fla. 1987) (rejecting Seminole's free exercise challenge to a conviction for killing a Florida panther in violation of the Endangered Species Act). *See also United States v. Thirty Eight (38) Golden Eagles*, 649 F. Supp. 269, 277-78 (D. Nev. 1986) (rejecting Native American's free exercise challenge to a civil penalty imposed for violations of the Eagle Protection Act).

* * * *

In sum, the Santerias do not and cannot plausibly argue that Ordinance No. 87-40 or the Florida statute on which it is modeled infringe their free exercise or other constitutional rights. Because that ordinance and statute, standing alone, are sufficient to condemn the Santerias'

"unnecessar[y] or cruel[]" killing of animals, and because, as we next show, the other challenged ordinances only clarify the scope of the general prohibitions contained in Ordinance No. 87-40 and the state statute, the Santerias cannot succeed in their attack on the judgment below.

B. Ordinances No. 87-52, No. 87-71 and No. 87-72 Do Not Target Only Religious Conduct.

The other three ordinances at issue in this case, No. 87-52 (prohibiting, *inter alia*, the possession of animals intended for sacrifice or slaughter), No. 87-71 (prohibiting the sacrifice of animals) and No. 87-72 (prohibiting the slaughter of any animals in premises not properly zoned for that purpose), were adopted by the City of Hialeah during September 1987, just three months after Ordinance No. 87-40 was passed. The term "sacrifice," as used in both Ordinance No. 87-52 and No. 87-71, is defined as meaning "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." The September ordinances are more specific in scope than No. 87-40, but they are no less neutral.[7/]

[7/] The Santerias emphasize that the challenged ordinances were adopted only after their plans to conduct sacrifices were made public. Pet. Br. at 14. That fact is immaterial. It was similarly true that prohibitions against polygamy, such as the Anti-Bigamy Act of 1862 upheld in *Reynolds v. United States*, 98 U.S. 145 (1879), were enacted in response to the growth of the Mormon church in the western United States. *See* Whitson, *American Pluralism*, Thought 492, 521 (1962). The fact that a religious practice brings to light a problem of widespread concern and elicits a general prohibition does not shield the religious group from that prohibition.

Hialeah's September ordinances only clarify that ritual animal sacrifice was prohibited under the general prohibition found in Ordinance No. 87-40. The scope of these clarifying ordinances was not restricted to animals tortured and killed in religious ceremonies; ritual animal sacrifice would include non-religious conduct such as the initiation practices of fraternal organizations. Anti-cruelty laws frequently list a series of prohibited acts by way of illustration: Their "purpose [i]s to provide a punishment for cruelty to animals and to make clear this general purpose [these laws] enumerate[] a series of acts or omissions which might constitute such cruelty." *Bunt*, 462 N.Y.S.2d at 144.

The Santerias confuse the terms "ritual or ceremony" used in Ordinances No. 87-52 and No. 87-71 with the term "religious." These terms are not coextensive. Although religious ceremonies are rituals, not all rituals are religious and the term ceremony has an even broader reach. Thus, the mere use of the term "ritual" in a statute or ordinance does not constitute a free exercise violation. *See Jones v. Butz*, 374 F. Supp. 1284, 1292-93 (S.D.N.Y.) (rejecting Free Exercise and Establishment Clause challenges to the Federal Humane Slaughter Act, which uses the term "ritual"), *aff'd*, 419 U.S. 806 (1974). *See also Davis v. Beason*, 133 U.S. 333, 335-36 n.1 (1890) (upholding an Idaho statute that made persons ineligible to vote or hold public office if they were polygamists or "'member[s] of any order . . . which teaches, advises, counsels, or encourages its members or devotees or any other persons to commit the crime of bigamy or polygamy . . . either as a *rite or ceremony* of such order . . . .'" (emphasis added)).

Thus, it is simply inaccurate to suggest that Hialeah prohibited solely or even primarily religious conduct when

it outlawed the cruel or unnecessary killing of animals. Florida's anti-cruelty laws are applied to a variety of secular activities: Cockfighting is unlawful in Florida, and the state's Attorney General recently issued an opinion that the killing of an animal for the purpose of using its carcass in the training of greyhounds violates the state's anti-cruelty statute. Op. Fla. Att'y Gen. 90-29 (1990). Bullfighting, a popular sport in Spanish countries, is also prohibited in Florida, *see C.E. America v. Antinori*, 210 So. 2d 443, 446 (Fla. 1968) (bloodless bullfighting violates state anti-cruelty statute), as well as in other states, *see Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises*, 237 A.2d 342, 344-46 (Pa. 1968).[8/] Plainly, the Hialeah ordinances are not narrowly focused only on the killing of animals for religious reasons.

C. Ordinances No. 87-52, No. 87-71 and No. 87-72 Are Part Of A Neutral And Generally Applicable City Prohibition Against Animal Cruelty.

Petitioners err in their analysis of the legislative purpose underlying the September 1987 ordinances. In reviewing legislation, courts strive to construe similar enactments *in pari materia*, and this canon of construction "makes the most sense when the statutes were enacted by the same legislative body at the same time." *Erlenbaugh v. United States*, 409 U.S. 239, 243-44 (1972). Moreover, where existing legislation is of a general nature and indicative of settled policy, "new enactments of a fragmentary

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[8/] Courts long ago held that the shooting of tame pigeons for sport violated anti-cruelty laws. *See Waters v. People*, 46 P. 112 (Colo. 1896); *State v. Porter*, 16 S.E. 915 (N.C. 1893).

nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it . . . ." *United States v. Jefferson Electric Manufacturing Co.*, 291 U.S. 386, 396 (1934).

Adopted shortly after Ordinance No. 87-40 (which itself simply reiterated a long-standing state and municipal policy against cruelty to animals), the September ordinances must be construed in the context of the more general law that they were clarifying. The district court's analysis of Hialeah's ordinances, which the Court of Appeals adopted, fully comports with the interpretive approach commanded by this Court. The Santerias' argument, which treats Ordinance No. 87-40 as an afterthought, inverts the sequence of enactment.

The September ordinances define and separately prohibit ritual animal sacrifice, thereby serving as notice or "gap-filling" measures designed to clarify and refine the broad scope of Ordinance No. 87-40. Evidently, some groups believed they were exempt from the animal cruelty laws of the State of Florida and City of Hialeah because of a state provision exempting "ritual slaughter." FLA. STAT. § 828.22. Indeed, before the district court, the Santerias argued that the state's exemption for ritual slaughter applied to it and preempted the Hialeah ordinances. Pet. App. A30-A33, 723 F. Supp. at 1480-81.[9/]

[9/] Now the Santerias take the position that the ordinances discriminate between religions because Jewish kosher slaughter is protected as a matter of state law. But the state provision does nothing more than exempt kosher slaughter from the humane methods requirement applicable in commercial slaughterhouses. As there are no commercial slaughterhouses permitted in the City of Hialeah, Pet. App. A33, 723 F. Supp. at 1481 n.46, there is no kosher slaughter in the City.

The three ordinances adopted by the City in September 1987 made clear that no such exemption from its blanket prohibition on animal cruelty was intended. Thus, the district court found that:

> [The ordinances] *clarify* that religious sacrifice of animals is not included in the exemption provided for ritual slaughter in kosher slaughterhouses, and that animal sacrifices violate the anti-cruelty statute of the State of Florida, and the various zoning regulations of the City of Hialeah.

Pet. App. A23, 723 F. Supp. at 1476 (emphasis added). After first noting that Ordinance No. 87-40 nowhere mentions religion or ritual, the district court explained that Ordinance No. 87-52 (which was amended in turn by No. 87-71) "was not meant to single out persons engaged in ritual sacrifice, but to put those persons on notice that the state exemption for ritual slaughter only applied to commercial ritual slaughter, done in slaughterhouses." Pet. App. A39, 723 F. Supp. at 1484.

When properly understood as gap-filling measures, the September ordinances are part of a neutral and generally applicable prohibition on animal cruelty. The net effect of Hialeah's legislative enactments is a coherent response to problems arising from the cruel and unnecessary killing of animals within the City limits. *See Jones v. Butz*, 374 F. Supp. at 1293 (reading the Federal Humane Slaughter Act as a whole, rather than focusing purely on the challenged provision, the court held that the Act served a secular legislative purpose even though "one of the provisions coincided with the method for Jewish ritual slaughter"). The Santerias' argument to the contrary misapprehends the scope of the ordinances. The Hialeah ordinances do not draw a distinction between religious and secular motivations for torturing or killing animals;[10/] the ordinances broadly prohibit all cruelty to animals and put all groups on notice that ritual sacrifice is included in this general prohibition. Under the Court's ruling in *Employment Division v. Smith*, that should end the constitutional inquiry.

II. ANIMAL CRUELTY LAWS ADVANCE COMPELLING STATE INTERESTS.

Because the ordinances taken as a whole create a neutral and generally applicable prohibition on cruelty to animals, the City of Hialeah need not advance any compelling state interest to justify its enactments. *See Employment Division v. Smith*, 494 U.S. at 879-86. However, even were such a showing of compelling state interest required in this case, the lower courts were fully justified in finding that the Hialeah ordinances advance several interrelated and compelling state interests in promoting animal welfare and public health.

10/ The Santerias erroneously assert that the September ordinances "permit" other types of animal cruelty. However, the only other form of killing addressed by these ordinances is slaughter, and the ordinances simply reiterate the relevant provisions in the state statute that slaughter be confined, with limited exceptions, to properly licensed establishments. In any event, Hialeah does not permit the operation of slaughterhouses within the City. Pet. App. A33, 723 F. Supp. at 1481 n.46.

A. Prohibitions On The Cruel Or Unnecessary Killing Of Animals Promote Several Compelling Governmental Interests.

The prevention of cruelty to animals promotes a number of compelling state interests. The district court found that animals used in Santeria worship suffer before and during ritual sacrifice. Pet. App. A12-A18, 723 F. Supp. at 1472-74.[11/] Although the common law viewed animals simply as property,[12/] states began enacting statutes to protect animals against such mistreatment more than a century ago. Pointing out that by 1913 all 50 states and the District of Columbia had adopted anti-cruelty laws, one court observed that "[i]t has long been the public policy of this country to avoid unnecessary cruelty to animals." *Humane Society v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986). Most of these states specifically prohibit the cruel or unnecessary killing of animals.

Congress has enacted a number of laws to protect animals, including the Humane Methods of Slaughter Act, 7 U.S.C. § 1901 *et seq.*, and the Animal Welfare Act, 7

11/ The Santeria religion has been associated with terrible cruelty toward animals. The Santerias here effectively concede that other groups may sacrifice animals in extremely brutal ways, with all the attendant risks to public health and safety. It is of no consequence that their own methods of killing may be somewhat more refined than the methods used by other groups that sacrifice animals for purposes of evaluating the compelling interests advanced by the challenged ordinances.

12/ *See Geer v. Connecticut*, 161 U.S. 519 (1896), *overruled by Hughes v. Oklahoma*, 441 U.S. 322 (1979) (rejecting the nineteenth century legal fiction that wild animals are owned by the state, while reaffirming the state's regulatory interest in their preservation).

U.S.C. § 2131 *et seq.* Indeed, it is the declared "policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods." 7 U.S.C. § 1901. In the House Report accompanying the 1978 amendments to the Humane Methods of Slaughter Act, Congress explained that the original Act "had its genesis in concern for the humane treatment of animals . . . ." H.R. Rep. No. 1336, 95th Cong., 2d Sess. 3 (July 10, 1978). The Animal Welfare Act "represent[ed] a continuing commitment by Congress to the ethic of kindness to dumb animals." H.R. Rep. No. 1651, 91st Cong., 2d Sess. 1 (December 2, 1970). Even the Internal Revenue Code recognizes this ethic, granting tax exempt status to organizations involved in the prevention of cruelty to animals. 26 U.S.C. § 501(c)(3).

Laws against cruelty to animals, including animal sacrifice, reflect a deep-seated revulsion against specific practices in which animals suffer abuse. This interest is a powerful one, with roots wholly unrelated to the suppression of religion. More than a century ago, laws against polygamy were upheld by the Court on a similar basis, namely the long-standing cultural revulsion against the practice:

> Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people.

Reynolds v. United States, 98 U.S. 145, 164 (1879). Subsequent Court decisions were even more emphatic in their condemnation of the practice:

> The State has a perfect right to prohibit polygamy, and all other open offences against the enlightened sentiment of mankind, notwithstanding the pretence of religious conviction by which they may be advocated and practiced.

Mormon Church v. United States, 136 U.S. 1, 49-50 (1890) (describing polygamy as a "barbarous practice," "nefarious doctrine," and "blot on our civilization"); *Davis v. Beason*, 133 U.S. 333, 341 (1890) ("Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. . . . Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment."). The Court in *Davis* emphasized that "[c]rime is not the less odious because sanctioned by what any particular sect may designate as religion." 133 U.S. at 345. Likewise, the cruel or unnecessary killing of animals is no less offensive when performed during religious ceremonies.

Laws for the prevention of cruelty to animals, especially cruelty like that practiced by the Santerias in an open and obvious fashion, also are concerned with the welfare of the community. Because "cruelty to animals is an offense 'against public morals, which the commission of cruel and barbarous acts tends to corrupt,'" anti-cruelty "statutes are 'directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt the morals of those who observe or have knowledge of those acts.'" *Animal Legal Defense Fund v. Provimi Veal Corp.*, 626 F. Supp. 278, 280 (D. Mass.) (citations omitted), *aff'd*, 802 F.2d 440 (1st Cir. 1986).

> Over the centuries the disposition to look upon such brutalities [to animals] with favor or approval has gradually lessened, and compassion and concern for man's fellow creatures of the earth has increased to the extent that it is now quite generally thought that the witnessing of animals fighting, injuring and perhaps killing one another is a cruel and barbarous practice, discordant to man's better instincts and so offensive to his finer sensibilities that it is demeaning to morals.

Peck v. Dunn, 574 P.2d 367, 369 (Utah) (footnote omitted), *cert. denied*, 436 U.S. 927 (1978). Exposure to animal sacrifice will make individuals less inhibited about treating animals as objects and subjecting them to cruelty, a vicious cycle that the ordinances seek to avoid.

The state has a vital interest in protecting participants and members of an audience witnessing conduct of the sort at issue here, whether it occurs during a religious ceremony or at a cockfight or bullfight. Indeed, "courts have sustained government prohibitions on handling venomous snakes or drinking poison, even as part of a religious ceremony,"[13] a less traumatic event than the ones regularly engaged in by the Santerias in this case. This

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[13] *McDaniel v. Paty*, 435 U.S. 618, 628 n.8 (1978). *See State v. Massey*, 229 N.C. 734, 51 S.E.2d 179, *appeal dismissed sub nom. Bunn v. North Carolina*, 336 U.S. 942 (1949) (cited in *Smith*, 494 U.S. at 889). One of the snake handling decisions upheld a state statute which provided that: "No person shall display, handle or use any kind of snake or reptile in connection with any *religious* service or gathering." *Lawson v. Commonwealth*, 291 Ky. 437, 164 S.W.2d 972 (Ky. App. 1942) (emphasis added).

state interest is particularly strong when members of the audience include children.[14/] *See New York v. Ferber*, 458 U.S. 747, 756-58 (1982).

The district court found that children of all ages witness Santeria animal sacrifices and are sometimes themselves the focus of initiation ceremonies. Pet. App. A16, 723 F. Supp. at 1474 n.24. The district court concluded that ritual animal sacrifice would seriously jeopardize the psychological well-being of children.[15/]

> The evidence at trial established that exposure to the ritual sacrifice of animals imperils the psychological well-being of children and increases the likelihood that a child will become more aggressive and violent. Based on the expert testimony, the City has shown that the risk to children justifies the absolute ban on animal sacrifice.

[14/] Although the court of appeals expressly declined to rely on this rationale, this Court may clearly do so. *See Blum v. Bacon*, 457 U.S. 132, 137 n.5 (1982); *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979).

[15/] These findings accord with the relevant literature on the subject. *See* Felthous & Kellert, *Violence Against Animals and People: Is Aggression Against Living Creatures Generalized?*, 14 BULL. AM. ACAD. PSYCHIATRY LAW 55 (1986). The authors of this study noted that a number of the felons they interviewed had reported observing or participating in the killing of animals. *See id.* at 59, 61, 62 (noting that one subject provided a good illustration of the "social learning of aggressive behavior toward animals from a parent").

Pet. App. A44, 723 F. Supp. at 1486. This interest clearly sustains the prohibition of ritualistic animal sacrifice; in none of the other examples cited by the Santerias, *e.g.*, the boiling of lobsters or killing of vermin, is an audience likely to observe the brutal killing of animals.

The Court has held that the risk of emotional injury to children outweighs the countervailing religious rights of parents. In *Prince v. Massachusetts*, 321 U.S. 158 (1944) (cited in *Employment Division v. Smith*, 494 U.S. at 889), a Jehovah's Witness challenged a state law applied to prohibit religious leafletting by minors. After emphasizing the state's undoubted interest in child welfare, even in cases where conflicts arise between state interests and parental or religious rights, the court observed that propagandizing "create[s] situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face." *Id.* at 169-70 (adding that "emotional excitement and psychological or physical injury" could result). The Court also pointed out that the state's power to safeguard the psychological welfare of children "is broad enough to reach these peripheral instances in which the parent's supervision may reduce but cannot eliminate entirely the ill effects of the prohibited conduct." *Id.* at 170. *See also Jehovah's Witnesses v. King County Hospital*, 278 F. Supp. 488, 504 (W.D. Wash. 1967) (state interest in child welfare justified authorizing blood transfusions for children over parent's religious objections), *aff'd*, 390 U.S. 598 (1968).

In addition to promoting animal welfare and protecting the psychological well-being of children and other participants, Hialeah's prohibition on the unregulated killing of animals in the City also helps prevent the spread

of disease to humans. The courts below found that the Hialeah ordinances furthered a vital government interest in the prevention of disease. Pet. App. A42-A44, 723 F. Supp. at 1485. States have a compelling interest in controlling the spread of diseases harbored by animals. *See Maine v. Taylor*, 477 U.S. 131 (1986) (upholding against a Commerce Clause challenge an embargo of live baitfish to protect against importation of diseased fish); *Mintz v. Baldwin*, 289 U.S. 346 (1933) (similar holding re inspection of imported cattle); *Conner v. Carlton*, 223 So. 2d 324 (Fla. 1969) ("brucellosis disease in domestic animals represents a dangerous subject of 'compelling public interest' sufficient to justify making an exception to the fundamental rule of due process"), *appeal dismissed*, 396 U.S. 272 (1969). Indeed, this Court has held that "the right to practice religion freely does not include liberty to expose the community or the child to communicable disease." *Prince v. Massachusetts*, 321 U.S. at 166-67. Animal welfare and public health represent interrelated and compelling state interests.

B. The Hialeah Ordinances Advance These Interrelated And Compelling State Interests.

The Santerias argue that a compelling interest must justify the distinction drawn by the ordinances between ritual sacrifice, on the one hand, and the killing of animals for food and safety reasons, on the other hand, citing the Court's recent decision in *Simon & Schuster, Inc. v. New York State Crime Victims Board*, 112 S. Ct. 501 (1991). However, in *Simon & Schuster*, the statute "single[d] out income derived from expressive activity for a burden the State places on no other income, and [was] directed at works only with a specified content." 112 S. Ct. at 508; *see also id.* at 512 (Kennedy, J., concurring in judgment) ("The

New York statute we now consider imposes severe restrictions on authors and publishers, using as its sole criterion the content of what is written."). Here, by contrast, the ban on "ritual" cruelty applies to religious and non-religious conduct alike.

In arguing that the ordinances are not narrowly tailored to achieve compelling state interests, the Santerias inaccurately contend that the ordinances "permit" a number of exceptions for secular activities that would otherwise constitute animal cruelty. They enumerate a litany of supposed gaps in the City's prohibition on animal cruelty, including hunting, fishing, selling meat, boiling lobsters, euthanizing strays, and the destruction of vermin by exterminators. However, none of these examples involve activities that would be considered "cruel" or "unnecessary" killings.[16/] For example, in the case of euthanasia of strays by humane societies, countervailing public health and animal welfare concerns justify the killing and the procedure is carefully regulated to ensure that no cruelty is involved. FLA. STAT. §§ 828.05-828.065.

Moreover, even if some of the other examples raise legitimate animal welfare concerns, none involve the additional compelling state interests in controlling the spread of disease and avoiding psychic impact on participants associated with ceremonial killings. Hunting, fishing, and slaughter of livestock are widely accepted means of provid-

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16/ In the Eighth Amendment context, a punishment will be judged "cruel and unusual" based on either common law norms in 1789 or objective evidence of America's "evolving standard of decency." *See Penry v. Lynaugh*, 492 U.S. 302, 330-31 (1989) ("The clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.").

ing food, and these practices do not raise the same concerns as ceremonial killings. The revulsion against animal cruelty for its own sake is quite different from other forms of animal killing which are not prohibited in Florida (or anywhere else for that matter).

> [D]efendants contend that . . . hunting and fishing, which are regulated but not wholly prohibited by statute, are just as cruel to animals as cockfighting exhibitions. Nevertheless, reasonable grounds exist for the statutory classification. . . . [B]esides providing sport, hunting and fishing, unlike cockfighting, provide food; and hunting benefits certain species by controlling population levels.

State v. Ham, 691 P.2d 239, 241 (Wash. App. 1984). "The Legislature may prohibit cockfighting without proscribing all activities that inflict cruelty upon animals." *Id.* Similarly, a state may outlaw the act of killing animals for the sake of causing death without also prohibiting the killing of animals for purposes that advance or at least do not contravene compelling state interests.

In any event, even if Hialeah has not addressed every situation where the compelling state interests in public health and animal welfare may intersect, the ordinances are not invalid for underinclusiveness. The City of Hialeah's ordinances fall within the rule that allows legislation to address issues in seriatim fashion without being underinclusive. A state is "not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way." *Semler v. Dental Examiners*, 294 U.S. 608, 610 (1935). In *Williamson v. Lee Optical*, 348 U.S. 483 (1955),

the Court addressed the underinclusiveness problem with the following observation:

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think.... Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

Id. at 489; *see also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981). In a decision upholding the Animal Welfare Act against constitutional challenge, the D.C. Circuit rejected the claim that Congress had acted in an unjustly discriminatory fashion when it "recognized a problem of inhumanity to animals but attacked only a part of it" by imposing requirements "upon producers of animal acts and other performances, but not upon operators of rodeos and other enterprises . . . ." *Haviland v. Butz*, 543 F.2d 169, 176-77 (D.C. Cir. 1976). This Court has applied the same analysis to underinclusiveness arguments raised in the First Amendment context. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52-53 (1986) (rejecting claim that adult theaters had been singled out for discriminatory treatment).

C. The Risks To Public Health And Animal Welfare Are Not Speculative.

The Santerias complain that the district court could only identify speculative risks associated with animal sacrifice. This represents a belated effort to challenge findings of fact which were not contested in the Court of

Appeals. That court noted in its per curiam decision that the district court's "extensive findings of fact" had not been contested by either party. Pet. App. A2.

The district court found that the ritual sacrifice of animals in South Florida was becoming a serious problem, estimating on the basis of numbers provided by the Santerias that between 12,000 and 18,000 animals were being sacrificed annually in Dade County. Pet. App. A15, 723 F. Supp. at 1473 n.22. The court found that many of these animals were purchased through stores known as botanicas and subjected to "conditions [which] can cause intense suffering by the animal." Pet. App. A17-A18, 723 F. Supp. at 1474. The court also found that "the method used in sacrificing the animals is not humane, but in fact causes great fear and pain to the animal." Pet. App. A14-A15, 723 F. Supp. at 1473. The court also made detailed findings concerning the hazards of disease outbreaks associated with the indiscriminate disposal of animal remains, Pet. App. A18-A19, 723 F. Supp. at 1474-75, and the risk to the psychological welfare of children. Pet. App. A19-A22, 723 F. Supp. at 1475-76. The Santerias cannot now attempt to reopen the record and relitigate these findings.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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July 17, 1992